

# DMH Provider Employee Background Screening

## General Information and Guidelines

April 7, 2008

### Executive Summary

- All provider employees must have documentation of background screening compliance in the personnel files, including “existing” staff hired before requirements were put in place.
- Background screenings can be conducted through the Family Care Safety Registry, Caregiver Background Screening form or other acceptable alternative methods as outlined on pages 2 – 3 in this document.
- Exceptions process may be available in limited cases as outlined on page 4 of the document.

### Requirements and Authority

- Persons are disqualified from holding any position in any public or private facility or day program operated, funded (*considered to include all with a DMH contract*) or licensed and/or certified by the Department of Mental Health or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis if any of the following are true:
  - Person is listed on the Department of Mental Health Employee Disqualification Registry
  - Person is listed on the Department of Health and Senior Services (formerly DSS Division of Aging) Employee Disqualification List
  - Person has been convicted of or pled guilty or nolo contendere to any crime as identified in 630.155 RSMo or 630.160 RSMo
- Persons are disqualified from holding any direct care position in any public or private facility or day program operated, funded (*considered to include all with a DMH contract*) or licensed and/or certified by the Department of Mental Health or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis if any of the following are true:
  - Person has been convicted of or pled guilty or nolo contendere to any felony offense against persons as defined in chapter 565, RSMo; to any felony sexual offense as defined in chapter 566 RSMo; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, 569.020, 569.025, 569.035, 569.040, 569.050, 569.070, or 569.160 RSMo, or of an equivalent offense; or any violation of subsection 3 of section 198.070, RSMo.

- Person who has received a suspended imposition of sentence or a suspended execution of sentence following a plea of guilty to any of the disqualifying crimes listed above.
- Providers must initiate the criminal background checks and the DMH Registry and DHSS List inquiries prior to the employee or volunteer having contact with residents, clients or patients. Employee/volunteer records should reflect documentation that these inquiries were initiated promptly; and the results of those inquiries.
- This requirement is communicated and receives authority via three different documents.
  - Missouri Revised Statute 630.170; *Disqualification for employment because of conviction—appeal process—criminal record review, procedure—registry maintained, when.*
  - Missouri Code of State Regulations 9 CSR 10-5.190, *Background Screening for Employees and Volunteers*
  - DMH General Contractual Requirements, Part III, number 49.
- See the attached table of disqualifying offenses. In reviewing the table for use in hiring decisions, please note that section 630.170.2, RSMo, includes “an equivalent felony offense” as a disqualifying offense; as a result, the provider should carefully evaluate whether a felony offense may be disqualifying as an equivalent felony. If the provider has any doubt about whether an offense is disqualifying, please contact the Department Exceptions Committee.

## **Processes for Obtaining Employee Background Screening**

- Providers may secure the required employee background screening information in a variety of ways. They may use the “Family Care Safety Registry” managed by the Department of Health and Senior Services; or they may utilize the “Caregiver Background Screening” program managed by the Missouri State Highway Patrol; or they may independently employ someone to secure the criminal history, DMH Registry and DHSS List information.
  - “Family Care Safety Registry”: Utilizing this process requires that the provider submit a form to the Department of Health and Senior Services requesting background information. Although it does not require a notarized signature from the employee upon whom the background check is being performed, it does require that the employee “register” with the Family Care Safety Registry” before the background check can occur. Some caregivers are required by law to register, such as child care workers and personal care attendants. Using the FCSR process requires the provider make only one request and they will receive one report that has the

information from all the required background databases. In addition to the required screenings, the registry will also provide results that match the Child Abuse/Neglect (CA/N) registry. Forms for registering employees and for requesting background checks may be downloaded by accessing the following website: <http://www.dhss.mo.gov/FCSR/AppsForms.html>. *ALERT: The DHSS web site also affords the opportunity to some providers to check the DHSS Employee Disqualification List on-line. Some providers mistakenly think that this list is the FCSR screen. It is not. It is merely one of the three required checks.*

- “Caregiver Background Screening”: Utilizing this process requires that the provider submit a form to the Missouri State Highway Patrol requesting specific background information. This form requires a notarized signature of the employee giving permission to share this information. Section A of this form provides a list of possible databases from which the provider selects those that they are required to check. Upon receipt, the MSHP will copy the request to the appropriate agencies, who will respond individually to the provider. When our providers use this mechanism we would expect to see three separate documents in the screened employee’s file; a criminal background report from MSHP, a DMH Employee Disqualification Registry Report, and a DHSS Employee Disqualification List Report. This process requires the provider to make only one request, yet get responses back from all three required databases. The Caregiver Background Screening form may be downloaded by accessing the following website: <http://www.dmh.mo.gov/hr/careback/caregive.htm>
- Other: Some providers contact these agencies individually or hire private investigators to secure these background checks. In these cases, the provider should have some official document from MSHP on criminal background; DMH on its check of the DMH Employee Disqualification Registry; and DHSS on its check of the DHSS Employee Disqualification List.

## **Verifying Compliance**

- The primary vehicle for verifying provider compliance with required employee background screening activities is the routine inspection of employee records at prescribed contract compliance audits, safety and basic assurance reviews, licensure surveys, or certification surveys.
- Provider compliance can also be verified during the course of special investigations such as alleged abuse/neglect investigations, staffing audits, and unannounced complaint investigations or surveys.

- Beginning in the Spring of 2005, the Department of Mental Health started running routine periodic match reports for the DMH Employee Disqualification Registry and Employment Security data from the Department of Labor and Industrial Relations. In January 2007, DMH also started to run electronic matches of the DHSS Disqualification List against the Employment Security data. DMH contracted, licensed or certified providers whose Employment Security data reflect the employment of a disqualified individual for whom we have no record of granting an exception will be contacted for information and required action.
- Any provider non-compliance information should be forwarded to the Divisions and DMH Licensure/Certification Unit for its implication in contracting, licensing and certifying decisions.

### **Exceptions Process**

- Some individuals disqualified from employment may request an “exception” from disqualification from the DMH Exceptions Committee. [9 CSR 10-5.190 (8)]
  - By statute, persons with some types of disqualifying crimes cannot receive a DMH “exception”; see the attached table.
  - The DMH Exceptions Committee cannot grant exceptions to persons listed on the employee disqualification list (EDL) maintained by DHSS.
    - DHSS does not operate an exceptions process for its EDL. DHSS has approached their EDL differently from DMH. Not all persons placed on the list remain on it forever. Many remain on the list for only a prescribed amount of time, such as 1 or 2 years. Only those committing the most egregious offenses have lifetime disqualification from employment.
    - DHSS does entertain requests for “good cause waivers” for persons with disqualifying crimes.
      - As a standard of practice, DMH has recognized/accepted these DHSS “good cause waivers” for facilities whom we co-license with DHSS in lieu of a DMH “exception”. DMH does not accept DHSS “good cause waivers” if DMH is the sole licensing/certifying agency. In those situations, the individual would be required to get an “exception” from DMH in order to work with consumers in that setting.
- The procedures for applying for an exception are outlined in the Missouri Code of State Regulations, 9 CSR 10-5.210.

- It should be noted that a granted “exception” does not remove anyone from the DMH Disqualification Registry or from the MSHP Criminal Record. It merely permits the employment of a disqualified individual to work although that permission may be limited. A letter granting an exception may and frequently has a number of conditions attached to it. For example, the letter may grant an exception to the employee for only a specific period of time; for a specific position or employer; for specific populations. Any time an employer checks the Registry/Criminal Background, the same disqualifying information will appear. A letter of exception would allow the employer to hire/retain the employee if all the conditions in the letter are met. A copy of that letter should be kept on file in the employee’s personnel record and available for inspection by DMH.
  - It should also be noted that an “exception” is not an appeal or reversal of a determination of abuse/neglect or a criminal conviction. The premise is that the individual did in fact perpetrate the abuse or committed the crime.
- For those interested in how the Exceptions Committee is formed and how it operates, please see DMH Operating Regulation, DOR 1.240

### **Special Notes**

- Statutory and regulatory prohibitions of employment of individuals with certain criminal history or abuse/neglect history have been around at least since 1980 in a variety of DMH, DSS and DHSS statutes and regulation. Specific language requiring background screens of applicants for employment in day or residential mental health programs has emerged over time, with the most comprehensive requirements occurring in 1997. Current language does not require that periodic background screening inquiries be made on a routine basis. However, in the course of doing business, should an employer learn that an employee has been convicted of a disqualifying crime since they were screened or is on the DMH or DHSS Employee Disqualification Registry/List, the employee should be relieved of all duties that place him/her in contact with consumers. This employee should not be allowed contact unless a letter of exception can be obtained from the Department via the Exceptions Process. In some cases, disqualification extends to any position in the agency.
- Some licensed residential providers have DHSS as their primary licensing authority, with DMH having a secondary licensing role. In rule, DMH does not require these providers to duplicate their screening efforts. However, please note that DHSS does not require some licensed providers to check the DMH Employee Disqualification Registry. If these providers contract with DMH or carry a DMH license or certificate, they are barred from employing an

individual who is on the DMH Registry. It is reasonable, therefore, for DMH employees who are contracting or surveying such organizations to verify that these providers have checked the DMH Registry in order to fulfill this requirement.

- The identified processes for obtaining background screens are subject to workload issues at MSHP or DHSS. Responses to appropriately filed inquiries can be delayed and not due to any failing on the part of the provider.
  - The key performance issues for which we hold providers responsible are:
    - The prompt requesting of this information;
    - Maintaining a personnel record that reflects documentation that the request has been made; and contains the background information when received; and
    - Appropriate provider response when they have information that indicates that an employee is disqualified.
  - If providers would like a quicker check on just the DMH Disqualification Registry, they can mail or fax (573-526-4561) a copy of a signed and notarized "Caregiver Background Screening" form to the DMH Office of Human Resources.
- Although neither statute nor rule requires providers to check the Child Abuse and Neglect (CA/N) information maintained by the Children Services/Department of Social Services, this information is available to our providers using either the Family Care Safety Registry or the Caregiver Background Screening methods for doing employee background checks. This information may be relevant to hiring decisions for providers serving children that they collect and use this information in processing new hires. The Child Abuse/Neglect (CA/N) information, also called the Division of Family Services' (DFS) Central Registry, contains the names of individuals who have been determined, through a DFS case investigation, to be perpetrators of child abuse and neglect. Each employer must assess and evaluate this information consistent with their established policies and practices.
- The Family Care Safety Registry also provides results when an employee or potential employee is listed on Missouri's Sex Offender registry.
- The State Auditor's Office (SAO) continues to monitor DMH, its facilities, and contractors for compliance with background screening requirements. A review of the November 2007 SAO audit report number 2007-70 titled "Protecting Clients from Abuse" can be found at <http://auditor.mo.gov/press/2007-70.htm> and is available for download.

## Table of Disqualifying Offenses Barring Consumer Contact Employment in Facilities Operated, Funded or Licensed by the Department of Mental Health

Statute	Disqualifying Offense	Classification	Disqualifies from all employment	Disqualifies from direct-care employment	Subject to Exception under 630.170 4?
630.170*	Listing on DMH Disqualification Registry	Administrative finding - not a crime	Yes	Yes	Yes
660.315	Listing on DHSS Employee Disqualification List	Administrative finding - not a crime	Yes	Yes	No
630.155	Physical abuse or Class I Neglect of a patient, resident or client	N/A because any violation is disqualifying	Yes	Yes	Yes
630.160	Furnishing unfit food to a patient, resident or client	N/A because any violation is disqualifying	Yes	Yes	Yes
565.020	1st degree Murder	Class A Felony	No	Yes	No
565.021	2nd degree Murder	Class A Felony	No	Yes	No
565.023	Voluntary Manslaughter	Class B Felony	No	Yes	Yes
565.024	Involuntary Manslaughter	Class C Felony	No	Yes	Yes
565.050	1st degree Assault	Class B Felony	No	Yes	Yes
565.060	2nd degree Assault	Class C Felony	No	Yes	Yes
565.065	Unlawful endangerment	Class C Felony	No	Yes	Yes
565.075	Assault while on school property	Class D Felony	No	Yes	Yes

\*630.170 RSMo states that any “equivalent felony offense” shall also be disqualified from consumer contact employment. When a background screening result indicates that an employee has a felony offense, the provider should carefully evaluate whether the offense may be disqualifying as an equivalent felony. If the provider has any doubt about whether an offense is disqualifying, please contact the Department Exceptions Committee.

<b>Statute</b>	<b>Disqualifying Offense</b>	<b>Classification</b>	<b>Disqualifies from all employment</b>	<b>Disqualifies from direct-care employment</b>	<b>Subject to Exception under 630.170 4?</b>
565.081	1st degree Assault of a law enforcement officer	Class A Felony	No	Yes	Yes
565.082	2 <sup>nd</sup> degree Assault of a law enforcement officer	Class B Felony	No	Yes	Yes
565.084	Tampering with judicial officer	Class C Felony	No	Yes	Yes
565.110	Kidnapping	Class A Felony	No	Yes	Yes
565.120	Felonious restraint	Class C Felony	No	Yes	Yes
565.130	Felony count of False Imprisonment	Class D Felony - only if victim is removed from the state	No	Yes	Yes
565.150	Felony-Interference with custody	Class D Felony	No	Yes	Yes
565.153	Parental Kidnapping	Class D Felony	No	Yes	Yes
565.156	Child Abduction	Class D Felony	No	Yes	Yes
565.180	1 <sup>st</sup> degree Elder Abuse	Class A Felony	No	Yes	Yes
565.182	2nd degree Elder Abuse	Class B Felony	No	Yes	Yes
565.253	Felony -Invasion of Privacy	Class C Felony only under specified circumstances	No	Yes	Yes
566.030	Forcible Rape	Felony	No	Yes	No
566.032	1 <sup>st</sup> degree Statutory Rape	Felony	No	Yes	No
566.034	2 <sup>nd</sup> degree Statutory rape	Class C Felony	No	Yes	No



<b>Statute</b>	<b>Disqualifying Offense</b>	<b>Classification</b>	<b>Disqualifies from all employment</b>	<b>Disqualifies from direct-care employment</b>	<b>Subject to Exception under 630.170 4?</b>
566.040	Sexual Assault	Class C Felony	No	Yes	No
566.060	Forcible Sodomy	Felony	No	Yes	No
566.062	1st degree Statutory Sodomy	Felony	No	Yes	No
566.064	2nd degree Statutory Sodomy	Class C Felony	No	Yes	No
566.067	1st degree Child Molestation	Class C Felony - becomes class B if repeat offense, weapon, injury or ritual.	No	Yes	No
566.068	2nd degree Child Molestation	Class D Felony if injury, weapon or ritual	No	Maybe; severity must raise to level of felony	No
566.070	Deviate Sexual Assault	Class C Felony	No	Yes	No
566.083	Sexual Misconduct involving a child	Class D Felony	No	Yes	No
566.090	1st degree Sexual Misconduct	Class D Felony only if repeat offense, weapon, injury or ritual	No	Yes	No
566.100	Sexual Abuse	Class C Felony	No	Yes	No
568.020	Incest	Class D Felony	No	Yes	No

<b>Statute</b>	<b>Disqualifying Offense</b>	<b>Classification</b>	<b>Disqualifies from all employment</b>	<b>Disqualifies from direct-care employment</b>	<b>Subject to Exception under 630.170 4?</b>
568.045	1 <sup>st</sup> degree Endangering the Welfare of Child	Class D Felony	No	Yes	Yes
568.050	2 <sup>nd</sup> degree Endangering the Welfare of Child	Class D Felony if ritual or ceremony	No	Yes	Yes
568.060	Abuse of a Child	Class C Felony	No	Yes	No
569.020	1st degree Robbery	Class A Felony	No	Yes	Yes
569.025	1st degree Pharmacy Robbery	Class A Felony	No	Yes	No
569.030	2nd degree Robbery	Class B Felony	No	Yes	Yes
569.035	2nd degree Pharmacy Robbery	Class B Felony	No	Yes	Yes
569.040	1st degree Arson	Class B Felony	No	Yes	Yes
569.050	2nd degree Arson	C unless injury, then Class B Felony	No	Yes	Yes
569.070	Causing Catastrophe	Class A Felony	No	Yes	No
569.160	1st degree Burglary	Class B Felony	No	Yes	Yes
198.070 and 630.165	Failure to report A/N	Class A Misdemeanor	No	Yes	Yes